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| REPORT DOCUMENTATION PAGE | | | | Form Approved OMB No. 0704-0188 | |
| <small>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Washington Headquarters Service, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington, DC 20503.</small> | | | | | |
| PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. | | | | | |
| 1. REPORT DATE (DD-MM-YYYY) 18/04/2013 | | 2. REPORT TYPE Master of Military Studies Research Paper | | 3. DATES COVERED (From - To) September 2012 - April 2013 | |
| 4. TITLE AND SUBTITLE Islamic Concept of Just War and Laws of Armed Conflict (LoAC): A Contemplative Perspective towards Better Understanding of Jihad and Humanistic Dimensions of Islam | | | | 5a. CONTRACT NUMBER N/A | |
| | | | | 5b. GRANT NUMBER N/A | |
| | | | | 5c. PROGRAM ELEMENT NUMBER N/A | |
| 6. AUTHOR(S) Hayat, Amer, Major | | | | 5d. PROJECT NUMBER N/A | |
| | | | | 5e. TASK NUMBER N/A | |
| | | | | 5f. WORK UNIT NUMBER N/A | |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) USMC Command and Staff College Marine Corps University 2076 South Street Quantico, VA 22134-5068 | | | | 8. PERFORMING ORGANIZATION REPORT NUMBER N/A | |
| 9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A | | | | 10. SPONSOR/MONITOR'S ACRONYM(S) N/A | |
| | | | | 11. SPONSORING/MONITORING AGENCY REPORT NUMBER N/A | |
| 12. DISTRIBUTION AVAILABILITY STATEMENT Unlimited | | | | | |
| 13. SUPPLEMENTARY NOTES N/A | | | | | |
| 14. ABSTRACT The prevalent reservations of the West about Islamic idea of just war and its LoAC are mainly attributable to the lack of clear understanding of Islam. Islam is explicit on the idea of warfare and its causative factors. It gives highest value to the human dignity in formulating its laws of conflict. The essence of the Islamic LoAC is found in the core values of controlled use of force, distinction between the combatants and non-combatants, and a preference for peace. Islam does not condone persecution and injustice. Islamic laws ensure protection of basic human rights, and are the embodiment of a complete code of conduct in warfare. The diversity in application of Islamic laws, which stems from differing interpretations that has been further accentuated by prevalent global political environment, is exemplified in the conduct of ongoing anti-terrorist campaign in Pakistan. Most Muslim nations like Pakistan have based their national constitutions on Islamic Jurisprudence which demonstrates that the Islamic LoAC and International Humanitarian Law complement each other towards attainment of greatest ideals of justice, peace, and protection of human rights. | | | | | |
| 15. SUBJECT TERMS Islamic Concept of Just War; Islamic Laws of Armed conflict; Humanistic Dimensions of Islam | | | | | |
| 16. SECURITY CLASSIFICATION OF: | | 17. LIMITATION OF ABSTRACT | 18. NUMBER OF PAGES | 19a. NAME OF RESPONSIBLE PERSON Marine Corps University / Command and Staff College | |

INSTRUCTIONS FOR COMPLETING SF 298

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|-----------------------------|-------------------------------|--------------------------------|----|----|--|
| a. REPORT Unclass | b. ABSTRACT Unclass | c. THIS PAGE Unclass | UU | 65 | 19b. TELEPHONE NUMBER <i>(Include area code)</i> (703) 784-3330 (Admin Office) |
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United States Marine Corps
Command and Staff College
Marine Corps University
2076 South Street
Marine Corps Combat Development Command
Quantico, Virginia 22134-5068

MASTER OF MILITARY STUDIES

TITLE:

ISLAMIC CONCEPT OF JUST WAR AND LAWS OF ARMED CONFLICT: A
CONTEMPLATIVE PERSPECTIVE TOWARDS BETTER UNDERSTANDING OF
JIHAD AND HUMANISTIC DIMENSIONS OF ISLAM

SUBMITTED IN PARTIAL FULLFILMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTERS OF MILITARY STUDIES

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Date: *21 March 2013*

Executive Summary

Title: Islamic Concept of Just War and Laws of Armed Conflict (LoAC): A Contemplative Perspective towards Better Understanding of *Jihad* and Humanistic Dimensions of Islam.

Author: Major Amer Hayat.

Thesis: The Islamic jurisprudence, which is based on virtues of human dignity and protection of weak and undefended, is explicit on war and peace. It lays down elaborate guidance on the Jus ad Bellum, Jus in Bello, and Jus post Bellum.

Discussion: The prevalent reservations of the West about Islamic idea of just war and its LoAC are mainly attributable to the lack of clear understanding of Islam and cultural divide between the two sides. The lack of clear understanding of these laws in non-Muslim world and their malefic usage to their advantage by terrorists has distorted the image of Islam and Muslims.

Islam is explicit on the idea of warfare and its causative factors. It gives highest value to the human dignity in formulating its laws of conflict. The essence of the Islamic LoAC is found in the core values of controlled use of force, distinction between the combatants and non-combatants, and a preference for peace. Islam does not condone persecution and injustice. Islam denounces compulsion in terms of the religion of the non-Muslims and draws no distinction between the prophets. Islamic laws on Jus ad Bellum, Jus in Bello, and Jus post Bellum ensure protection of basic human rights, and are the embodiment of a complete code of conduct in warfare.

The diversity in application of Islamic laws, which stems from differing interpretations that has been further accentuated by prevalent global political environment, is exemplified in the conduct of ongoing anti-terrorist campaign in Pakistan. The conflict shows that the idea of Islamic LoAC condoning and justifying acts of terrorists is far removed from reality.

Most Muslim nations like Pakistan have based their national constitutions on Islamic Jurisprudence which demonstrates that the Islamic LoAC and International Humanitarian Law complement each other towards attainment of greatest ideals of justice, peace, and protection of human rights.

Conclusion: There is a need for greater awareness on the Islamic concept of warfare to enhance better understanding. Islamic laws elaborately cover various facets of the peace and war by laying clear guidelines. The idea of abodes of Islam and war has been incorrectly applied to justify terrorist actions of extremists. The increased collaboration of Islamic jurisprudence and the International Humanitarian Law will result in the protection of human rights across the spectrum.

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Acknowledgements

The research opportunity afforded by the USMC Command and Staff remained instrumental in driving the project. It allowed me to delve deeper into a subject that is contemporary, and has the potential to contribute towards achievement of a lasting peace in the world. The exposure to various dimensions of the world of military ethics, and the concept of a legitimate war in differing schools of thought acquired at the College provided an excellent foundation to undertake the study. I realized that the subject of Islamic LoAC and Islamic idea of warfare needs further amplification from the perspective of the western readers. The research work has permitted a self-exploration of my military experiences through the lens of military ethics. The research has opened new vistas of the knowledge onto me about the Islamic LoAC. It has introduced me to the great scope of compatibility between Islamic LoAC and the International Humanitarian Law. I am aware this research work is in no way comprehensive and complete, and neither can it be. The subject involves the study of the dynamics of evolution of the Muslims as a society in terms of peace and conflict over last 1400 years. In fact, this exploration will continue for me after this project as well.

I am deeply indebted to my mentor Dr Pauletta Ottis whose untiring guidance, supervision, and patience with my research work made the paper comprehensible. Her grasp of the subject, practical experience, and understanding of the requirements of professional research work remained my critical resources. I would also extend my gratitude to Lieutenant Colonel Mehar Omar Khan for reading through the first draft to offer valuable feedback. That said I just cannot thank my family who endured my prolonged stays at the Marine Corps Library and study desk at the cost of their share from my time without any complaints.

*“Fight in God’s cause against those who fight you, **but do not overstep the limits:** God does not love those who overstep the limits. Kill them wherever you encounter them, and drive them out from where they drove you out, **for persecution is more serious than killing.** Do not fight them at the Sacred Mosque unless they fight you there. If they do fight you, kill them—this is what such disbelievers deserve—but if they stop, then God is most forgiving and merciful.”* (The Holy Quran 2:190-192)¹

Introduction

The impact of the World Trade Center bombings on September 11, 2001 was to increase antagonism towards Muslims. This response was both profound and unimagined. In the alacrity to respond, any understanding of Islamic ideology became increasingly imprecise through the vested interpretations arising out of the interests of both Islamic extremists and the western hawks.² The ideological misinterpretation of these terrorists overshadowed a more complete and accurate image of Islam and its adherents, Muslims. Islam became synonymous with barbarianism and brutality as a result of ignorance, misunderstanding, and the often ill intended portrayal of Al Qaeda as the façade and follower of Islam. The tainted explanation of lingering conflicts such as Palestine and Kashmir, in the context of the religious ideologues, took attention away from the redress of core causes behind these conflicts; that allowed jingoists to translate them as an extension of Islamic militancy and religious expansionism.

The technological lag prevalent in the Muslim world since eighteenth century and the ever-present linguistic mismatch with the West contributed towards lack of an understanding of true Islamic traditions on war and peace in rest of the World. Muslims remained constrained in making any significant impact, and failed to use their religion to contribute towards the development of International Laws of Armed Conflict (LoAC). Meanwhile, the political and industrial revolution experienced by the West during the same period, afforded it an opportunity to lead the world, and dominate the evolution of international LoAC.

The International Humanitarian Law (IHL), evolved pursuant to Hague and Geneva conventions, is no exception to the absence of Muslim influence; though, all Muslim states are a signatory to it to varying extents.³ The costly absence from international politics contributed to the lack of awareness in non-Muslim audience on Islamic concept of just war and LoAC. The combination of misconstrued association with the violence and nonexistent contribution to the international jurisprudence has led to the incorrect portrayal of Islam being at tangent to the international jurisprudence on war and peace. The misperception has been further accentuated by varying interpretations of the Islamic LoAC and just war, and their vested use by some armed groups to perpetrate violence and achieve their objectives.

The multitude of religious interpretations and twisting of religious teachings to ones benefit are not specific to Islam; the phenomenon can be found in other great religions of the World as well. Nonetheless, the interpretation of Islamic ethics of war propagated in non-Muslim World is in quite contrast to wholesome and humanistic teachings of Islam on war and peace. There is a dire need to analyze the Islamic LoAC and idea of Just War for promoting better understanding.

This MMS paper posits that Islamic jurisprudence, which is based on virtues of human dignity and protection of weak and undefended, is explicit on war and peace. It lays down elaborate guidance on Jus ad Bellum, Jus in Bello, and Jus post Bellum. The concept of *Jihad* in Islam is not limited to the use of violence and warfare; it transcends towards the idea of struggle to become a better human being and evolve a peaceful society. The idea that Islamic LoAC condone and justify all acts of terrorists is far from reality and not true. The conduct of ongoing conflict in Pakistan against the terrorists distinguishes true Islamic jurisprudence from its extremist version. It demonstrates that there exists a greater room for complementary employment of the IHL and Islamic LoAC towards a peaceful co-existence in the World.

Part – I: International Humanitarian Law and Perspective on Islamic Jurisprudence

Evolution of International LoAC and Theory of Just War

Every society has a set of specified or unspecified laws which govern its handling of peace and conflict. These laws evolve as a consequence of religious, social, or cultural consideration of the society. From the most barbaric societies to the most civilized states, all aggressors and invaders, belonging to whatever creed or religion are restrained by such self-adopted rules. The evolution of humanitarian organizations such as International Committee of the Red Cross in the late 19th Century and the subsequent two World Wars prompted the need for a universally accepted LoAC. The emergence of the United Nations, the appearance of a Unipolar World, and the activism of non-state actors have only reinvigorated the debate on LoAC that began through adoption of First Geneva Convention in 1949.

The Human Rights law protects basic rights of individuals during the peacetime while the United Nations Charter currently deals with the justification for going to the war. The modern Just War theory, whose origin is traced back to Saint Augustine and Thomas Aquinas,⁴ is centered on the three cardinal principles namely right authority, just cause, and good intention.

IHL regulates the conduct of armed conflict and covers the non-combatants, those who give up fight, and the nature and use of force issues during the conflicts. It comprises four Geneva Conventions, and multiple agreements and protocols (the detailed constituents of IHL can be found at ICRC website).⁵ Almost all states of the world are a signatory to the conventions governing international and non-international conflicts. IHL covers the international and non-international armed conflicts but does not apply to the internal strife and disturbances in a state by treating them as an internal matter. IHL is more comprehensive towards the International armed conflicts but gives a less elaborate treatment to the non-international conflicts. The non-international conflicts are driven by the Article 3 common to

the four Geneva Conventions as well as through Additional Protocol II. Various tribunals and International Criminal Court have been established to ensure compliance to the IHL, however, not all the states and parties to the conflict have always adhered to its tenets. There are countless instances of non-compliance going unpunished. Nonetheless, the law has helped save many lives in last 70 years since its adoption.

Common Misperceptions about the Islamic Theory of Peace and Conflict

Islam has been accused of being a violent religion which used war as a means to further its message and cause.⁶ To some of the critics, Islam owes its birth and expansion to its imperial character rather than seriousness of its message. Some also believe that Islam has maintained this expansionism throughout history.⁷ Islam is believed to be a constant source of global conflicts.⁸ Consequently, a continuous theme of disregarding the social, cultural, historical, and geographical realities behind lingering conflicts like the Palestine and Kashmir, and cloaking them under a religious blanket gained popularity.⁹ At times, the actions of Al Qaeda and 9/11 attackers were also considered an extension of centuries old crusades between Muslims and Christendom.¹⁰

Such assertions fail to take into account the role of threats to the survival of the early Islam in the Arabia of the seventh century. The plethora of antagonistic literature churned out post 9/11 by the self-assumed experts on Islamic ideology has led to greater misunderstandings between Muslims and the non-Muslims.¹¹ The event provided hate groups an opportunity to twist the Islamic teachings on war and peace, and misinterpret them to serve their vested agenda. The mis-representation and mis-interpretation of facts did not remain confined to extremist groups but was fully employed by opportunistic writings in the West. The Islamic ideology was compared with Nazism and Communism without giving due regard to the fact that Islam has been in existence for over 1400 years.¹² The critics forgot that same ideology was employed by Muslims combating the Nazism and Communism

alongside or in support of the Western states and their objectives in WW II and Afghanistan. Some of the common anti Islam themes portrayed that the World in general and the United States in particular are threatened by *Shariah*.¹³ Islam has been described as totalitarian religion seeking to dislodge the Western culture and civilization. The extremist groups were often considered mainstream players and dynamic part of Muslims societies.¹⁴ Similarly, Islamic Laws or *Shariah* were considered anti-constitutional and against IHL.

These views neglected a broader Islamic perspective on just war and the conduct of armed conflict. Proponents of such themes failed to distinguish the essence of *Shariah* from its twisted application by the militant elements. In the haste to sideline the extremists and render them invalid, the moderate Muslims were erroneously propagated as being averse to the *Shariah*, which in reality they are not.¹⁵ This formulated the general impression that the Islamic teachings are in contravention to prevalent international jurisprudence. Islamic Law or *Shariah* are considered anti-democratic, anti-constitutional, and against the international laws of war and peace. Islam has also been accused of maltreatment of non-Muslims and denial of equal rights towards freedom of religious practices.

The quote from the Report of Team B II “*Too many Muslims, to borrow a metaphor from Mao, provide the sea in which the Jihadis swim*”¹⁶ bears a clear reflection of this view of the Islamic Jurisprudence. Muslims have been propagated being non-tolerant towards adherents of other world religions. It is believed that *Jihad* is an entirely violent activity which prompts brutality and massacre of non-Muslims. In this context, the indiscriminate usage of Islamic analogy of Abodes of Islam and War created paranoia. Violent *Jihad* is discussed as the basic tenet and fundamental religious obligation of every Muslim. It is considered that Islamic jurisprudence does not favor truces and treaties, and condones unrestrained use of violence to eliminate the enemies.¹⁷ It is alleged that Islamic Law intrudes

into the lives of its adherents who are not permitted to exercise their own judgment in their personal affairs.¹⁸

Such insensitive treatment of the Islamic ideology has contributed towards increased enmity of Muslims in the West and vice versa. In stating these prejudices against Islam, the critics failed to realize that violence is an intrinsic part of all great religions in an attempt to ensure their own survival and prevent extinction. Warfare has remained a decisive activity in all religions of the Book.¹⁹ The religions are forced into defensive or preemptive violence when a significant threat challenges their identity and existence.

The divide between liberals, moderates, and extremists of a religion has always led to inter or intra faith conflicts. Yet, no religion permits indiscriminate use of force and total annihilation of its adversaries.²⁰

War has increasingly distanced itself from religious influence and is being driven by social and political considerations. Any attempts, therefore, to color social, ethnic, or political conflicts with a religious coating produce disastrous consequences.

It is relevant to highlight that a generalization of the anti-Islam sentiment will be unfair as everyone in the West and that the Christianity in particular does not hold a prejudiced view of Islam. The Muslims realize that the prevalent anti-Islam sentiment is not common to every Westerner. The antagonistic views about Islam are limited to the hawks and extremists of other religions of the World and societies. Numerous books have been authored by the westerner writers to address prevalent misperceptions about Islam and highlight the divergence between agenda of the terrorist organizations like AL Qaeda and the true Islamic ideology.

Nonetheless, numerous surveys conducted indicate that there exists a prejudice against Muslims by a healthy proportion of the population in the Western countries based on their religion.²¹

Part – II: Tenets and Historical Context of Islamic Jurisprudence

Islamic Jurisprudence – the Shariah and idea of Human Rights

Islamic Jurisprudence

Islamic jurisprudence is commonly referred to as *Shariah* which is an Arabic word and literally means “*the path leading to the watering place.*”²² The *Shariah*, simply explained, is a code of life prescribed in its scriptures by the God for Muslims. It is considered as the righteous path to be followed by a Muslim to be successful in this World and hereafter. Islamic *Shariah* revolves around the doctrine enunciated in *Holy Quran* – the Islamic scripture. According to the Muslim faith, the Holy Quran is preserved in the manner it was revealed onto the Holy Prophet (PBUH), and remains the eternal word of the God to the mankind. *Shariah* has been further elaborated by the Holy Prophet (Peace be upon Him – PBUH) through his sayings and practice, commonly referred to as *Ahadees* and *Sunnah* respectively.²³ The Interpretation of *Ahadees* and *Sunnah* is an Islamic academic science which involves a detailed and authentic mechanism for their collection.

Islamic jurisprudence contained in the Holy Quran and the *Sunnah* is classified into five categories on the basis of their nature namely: (1) obligatory and (2) prohibited, those are considered binding, (3) recommended (4) approved, and (5) disliked.²⁴ The verses of the Holy Quran are clearly recognized as Meccan or Medanian in terms of the time of the revelation and are circumstantial. The Medanian verses generally reinforce and explain the instructions given in Meccan period; however, there are instances where a commandment of the Holy Quran revealed at Mecca and Medina appears in conflict or the meanings are not clearly understandable. In such cases further elaboration of the issue is done in the light of secondary sources of jurisprudence.²⁵ The secondary sources, collectively referred to as *Ijtihad*, form third tier of the Islamic Jurisprudence. The *Ijtihad* seeks to interpret Islamic teachings using techniques like *Ijma* and *Qiyas* on the matters where explicit instructions

cannot be found in the *Quran* and *Ahadees* or where further explanation of existing instructions is necessitated by changing dynamics²⁶ (refer appendix A for detailed layout of sources of Islamic Jurisprudence).

The first concise effort to document the justifications for going to war was made by Ibn Taymiyyah (d. 1328) after seven hundred years of the birth of Islam.²⁷ He contended and supported the view of majority Sunni jurists before him, with the exception of al-Shāfi'ī and some Hanafi jurists, that the war is sanctioned only in case of the aggression onto Muslims.

There is little disagreement amongst Muslims on the teachings of the *Holy Quran*, the *Sunnah*, and the *Ahadees* on the LoAC. Some differences, however, have been observed in terms of the interpretation of some of the *Ahadees* on the reasons to go to the war between the *Sunni* and the *Shia* schools of thought, and at places within sub-groups of these larger sects. The primary differences between the Sunni and Shia sects were political, but subsequent preference for various techniques of *Ijtihad* has led to difference of opinion on few other aspects of jurisprudence as well. The competing cultural, ethnic, religious and political interests of the leaders of respective sect combined with their particular understanding of the Islamic jurisprudence have created some divergence in views on the ethics of war and peace.

The complexity of the situation has particularly confounded the outside observers onto the real understanding of Islamic LoAC and theory of just war.²⁸ A critical review of Islamic Jurisprudence reveals that the Islamic teachings constitute comprehensive ethics for the conduct of international relations and warfare, which are not at tangent to the spirit of the international conventions in vogue.²⁹ Most of the Muslim states today have based their statutory laws on Islamic jurisprudence and conduct their international relations in war and peace amicably. *The object of this paper, therefore, remains to explore the standard view of Islamic theory of war and LoAC without straying into the perspective of individual sects.*

It is important to understand historical evolution of the early Islam for better comprehension of the application of Islamic scriptures over jurisprudence.³⁰ The Prophethood of Muhammad (PBUH) is divided between two distinct phases of his life and so are the revelations of the Holy Quran, the primary authoritative text for Muslims. The early period of the Prophethood, commonly referred to as the Meccan period, was also the early period of Islam. It was the time when Muslims were evolving as a religious community. The Islamic teachings during this period were focused on basic tenets of the religion as the threat to the survival of Islam was limited to the lives of individual Muslims and their families. The Quranic teachings focused on instilling a virtue of patience and fortitude into Muslims by not asking them to take up arms, as opposed to revenge and violence. The later part of the Prophethood, commonly referred to as the Medinan period, is the time when Islam had evolved fully as a society, and the threat to its survival enlarged manifolds, which led to multiple battles against the infidels. The revelations of the Holy Quran during this period mainly refer to the establishment of a Muslim society with its political, social, diplomatic and military jurisprudence.³¹

The nonviolent era of the Islamic evolution was quickly over when Muslims announced their presence in Medina. The non-Muslim tribes of the Arabia and other empires of that period felt threatened by their emergence and launched a vehement overt and covert campaign to exterminate Muslims. The Muslims were forced into a prolonged campaign of defensive and pre-emptive operations to ensure survival of Islam. The early part of the Islamic history is thus a story of political and military struggle to survive extinction. It was an endeavor to create space for freedom of practicing social and religious ideals by its followers. This struggle created a natural opportunity for the God and His Prophet (PBUH) to lay down the guidelines for Muslims in terms of Jus ad bellum, Jus in bellum, and Jus post bellum.

It is sometimes wrongly perceived that Muslims were not instructed to take up arms during Meccan period due to their limited strength and weak military structure while same became possible in Medinan period when they grew strong.³² The assertion is far from reality and ignores the fact that the first instance when Muslims took up arms at the Battle of Badr in Medinan period, they were outnumbered by one to three and were not in a position to fight. Therefore, the instructions on war and peace are related more to the nature of threat than mere military adventurism. In reality, the Meccan period was longer than the Medinan period and underscored the idea that Muslims learn virtues of peace alongside the violence of intimidation. He made them realize that the world is a necessary combination of violence and peace, where peace is the ultimate survivor and war is only a mean to achieve this long standing peace.

Islam and Human Rights

A deeper evaluation of the Islamic teachings reveals that Islam gives human rights in peace or war the greatest importance. Islam designates human beings as the vice-regents on the earth, and supports an equal status amongst people irrespective of the creed, color, or race. The Islamic idea of human preeminence rests on the following verse:-

*“People, We created you all from a single man and a single woman, and made you into races and tribes so that you should recognize one another. In God’s eyes, **the most honored of you are the ones most mindful of Him: God is all knowing, all aware.**”* The Holy Quran (49:13)

Islam gives the idea that human beings are born free of sins, and they should live peacefully. Human beings have been tasked to establish peace in the World based on divine principles of trust, justice, and consultation.³³ Muslim jurists have consensus on the fact that the human dignity is a divine right of a human being that is not subject to any sort of meritorious conduct or religious affinity.³⁴ The Holy Prophet (PBUH) emphasized the

message of unity and peace in the humanity by saying, “*O people! Your Creator is one; you are from the same ancestor; all of you are from Adam, and Adam was created from earth*”.³⁵

However, by referring back to the story of Adam, Islam recognizes that some human beings are prone to distraction by evil as well that might result in violence. The Holy Quran further states:-

“We have honored the children of Adam and carried them by land and sea; We have provided good sustenance for them and favored them specially above many of those We have created.” (17:70)

The epitome of the Islamic authoritative text on the sanctity of human rights is the final address delivered by the Holy Prophet (PBUH) at the eve of Pilgrimage to Mecca in 632 AD (refer appendix B for relevant extracts of the address). The address emphasized the importance of human rights, and respect for others’ life and property by declaring these sacred for Muslims. The Holy Prophet (PBUH) went to the extent of stating that a slave’s rights were equal to his master’s to signify importance of the rights of human beings.

The idea of human rights in Islam is based on the principle that the spiritual enlightenment drives material needs. Most Jurists of orthodox Islamic tradition describe five basic rights of Religion, Life, Mind, Honor and Property in respect of every human being that are to be protected in the armed conflict.³⁶ While other rights are self-explanatory, the right of mind implies the right of an individual to use and employ his mental faculties towards his and others betterment. The commandments to ensure protection of the right of mind include the prohibition of items leading to intoxication including alcohol, lying, perverted information, and the misinformed education etc.

Islam does not treat non-Muslims as a subject of repression or maltreatment but considers them a part of Islamic society. It protects the rights of non-Muslims as it protects the basic rights of Muslims. The prominent Muslims like Umar Abd al-Aziz and Umar ibn al

Khattab (God be pleased with them) reiterated their responsibility towards the non-Muslims in terms of provision of services to them as a basic state function.³⁷ Islam holds particularly greater reconciliatory approach towards the people of the book i.e. Christians and Jews. Historically Hindus, Buddhists and Zoroastrians have also lived as part of the Muslim societies peacefully while being free to practice their religion. In emphasizing the welfare of the non-Muslims, the Holy Quran clearly states:-

*“And He does not forbid you to deal kindly and justly with anyone who has not fought you for your faith or driven you out of your homes: **God loves the just.**”* (60:8)

Islam designates non-Muslims living in Islamic societies as the *Dhimmis* which literally translates to “the Protected”.³⁸ The non-Muslims were often required to pay a poll tax or “*Jizya*” in the past in return for being part of Islamic society, but they were not prohibited from undertaking their social, cultural, and religious obligations in accordance with their faith. The non-Muslims were only required to accept the political authority, and were not forced to cede their social and economic freedom. They were not even required to take up arms for the defense of the state unless one really wished himself to do so. This arrangement protected those minorities as well from oppression whose religious beliefs did not allow them to take up arms. Nonetheless, the word is no more in use in the Islamic world with the evolving geo political environment; however, some Western literature continues to quote it in derogatory terms.

The criticism of *Jizya* nowadays by some quarters generally speaks of the lack of understanding of the political and economic system of the Islamic state. For example, all Muslims are required to pay *Zakat* by Islamic Law to contribute towards the welfare of the poor and needy in the society, whereas the non-Muslims are exempt from it and have to pay *Jizya* only. Taxation and conformity to the laws of the state is nothing strange in the modern times. In modern states, all citizens have to pay multiple taxes in order to enjoy social

services provided by the state and have to conform to all state laws to retain the right to be a free citizen.

Understanding the Terms Harb, Qatilu and Jihad

The Islamic authoritative text uses three words for describing the conduct of war namely *Harb*, *Qital*, and *Jihad*. *Harb* refers to general warfare, whereas *Qatilu* means fight or go to war, and *Jihad* means to struggle.³⁹ The term *Qatilu* has been mostly used by the Holy Quran whenever the call to take up arms or warfare is specifically involved.⁴⁰

Unlike the other two terms, *Jihad* does not directly relate to warfare and carries broader meanings of the political and social struggle to renounce the evil and embrace virtue. The word *Jihad* is proactive and refers to the efforts to eliminate evil – whether in one’s inner self or society, but not necessarily by use of force. On an individual level, *Jihad* is undertaken to seek self-discipline and follow a righteous path, and is non-violent; while at societal level, it refers to the struggle undertaken against the oppression and injustices through both violent and non-violent means.⁴¹

In the Western media *Jihad* is often interpreted as *Holy War*. This interpretation contradicts both the Islamic definition, and the linguistic meanings of the word *Jihad* in English and Arabic. The Arabic word *Jihad* means ‘to strive’ or ‘to struggle’ in the English; whereas, the word *Holy War* means ‘Al Harb Al Muqaddas’ in the Arabic. The use of the word *Holy War* has never been a part of Islamic history or literature. In fact, the word *Holy War* has been more associated with the Christian genesis of the theory of just war from the times of Saint Augustine through Thomas Aquinas and Hugo Grotius than with the Islamic warfare. The concept found its real acceptance in the Christian world in the crusade era.⁴² A better understanding of the Islamic text shows that neither all wars are *Jihad*, nor every *Jihad* is a war in the Islamic concept of Jus ad bellum. There is no categorization of the war being

Holy in Islam; the war is either legal or illegal.⁴³ The mere fact that a war finds its justification in the religion does not make it the *Holy War*.⁴⁴

John Brennan, President Obama's counter terrorism advisor, has been quoted at two different instances to have said that the use of term *Jihadist* to describe Al Qaeda terrorists is a mistake because there is nothing holy, legitimate, or Islamic about targeting innocent noncombatants.⁴⁵

Contradictory to the normal perception in the West, *Jihad* is not one of the five pillars of Islam. The five basic tenets of Islam are the Islamic creed, daily prayers, almsgiving, fasting during the month of Ramadan, and pilgrimage to Mecca atleast once in a lifetime. Nonetheless, Islamic tradition holds *Jihad* as a highly regarded activity launched at a personal or societal front through nonviolent or violent means for God. The decision to embark on *Jihad* is considered a highly sacred action entrusted to the leader of the *Ummah*. This leader or ruler is required by *Shariah* to be one of the most pious Muslims.

Jihad can be both defensive and offensive dependent upon the circumstances. The offensive form refers to the efforts to relieve oppressed Muslims and/or free up their territories from illegal occupants. Modern Islamic scholars have increasingly emphasized the defensive form of *Jihad* than the offensive form.⁴⁶ *Jihad* has been used for both violent and non-violent struggle in the Islamic tradition. The nonviolent forms of *Jihad* include fighting one's inner self to attain piety, raising one's voice against a cruel ruler, and using one's writing skills against the injustice.

The struggle against one's inner sinfulness inclinations has been usually referred by the most jurists to be a greater form of *Jihad*.⁴⁷ Non-violent *Jihad* has been quoted in some of the *Ahadees* to be far greater in importance than its violent form. The Holy Prophet (PBUH) said:-

*"The best struggle (Jihad) is to speak the truth before a tyrannical ruler"*⁴⁸

“The best struggle is to struggle against your soul and your passion in the way of God, the most high”⁴⁹

“Shall I tell you of your best deed, the most pleasing to your King, the loftiest in your ranks, better than the giving of gold and silver, and better than meeting your enemy in battle, beheading him whilst he beheads you? The remembrance of God”⁵⁰

Islamic History and Treatment of LoAC

The famous ten commandments of the first Caliph of Islam Abou Bakr (God be pleased with him) given to Osama Ibn Zaid (God be pleased with him), the commander of the army sent to Syria as a follow up to Mu`ta, affirm the ethical perspective of war in Islam. He directed:-

*“Thou shall **not betray**; Thou shall **not bear hatred**; Thou shall **not attack from back**. Thou shall **not mutilate the dead**; Thou shall **not kill babies, or elderly men, or women**. Thou shall **not kill bees or burn them**; Thou shall **not cut fruitful trees**; Thou shall **not slay sheep, or cow, or camels except for food**; Thou shall **pass by peoples who kept themselves in their own temples... Leave them for their own business; and thou shall pass by people who serve you various foods; if you eat something recall Allah's name on it; and thou shall meet people who tie their heads with bands, strike them with your swords strongly... Move forward in the name of Allah**”⁵¹*

The historic example of behavior towards the defeated nations is the one wherein Caliph Umar (God be pleased with him), the second caliph of Islam, negotiated a treaty with the residents of Jerusalem on surrender by the Byzantines in 637 AD. Muslims were not to destroy any churches and were to afford maximum security to these places.⁵² Similarly Saladin displayed extreme magnanimity when he retook Jerusalem in 1187 AD. The Crusaders had killed nearly 40000 inhabitants irrespective of the religion or creed on capturing Jerusalem in 1099 AD.⁵³ Saladin forgave this unethical behavior of the Crusaders

and let the Christians and Jews return to the city peacefully. The punishments were meted out to those Knights Templars only who were responsible for the war crimes.

Khalid bin Walid (God be pleased with him) was a great Muslim military leader of early Islam (592 – 642 AD). The Holy Prophet (PBUH) had great respect for him and his chivalry; however, the Prophet (PBUH) did not hesitate for an instance in disowning Khalid's actions when he was suspected of violating the laid down ethics of war during the raid of Jadhimah.⁵⁴

The decision to embark on war in Islam, being a highly sacred action, has been entrusted to the leader of the *Ummah* or the *Caliph*, who ought to possess highest standards of moral values. It is not beyond imagination that over the course of history not all leaders of the Muslim nations and states, and commanders of the forces were perfect Muslims. There were instances when the belligerents were not at their best behavior, and did not follow the prescribed rules of *Shariah*. There have been instances in the past when Muslims were not being led by the most righteous and who were willing to use the name of *Jihad* to serve their benefit.

One of the most recent instances of such unethical behavior is the incident when Saddam Hussein was accused of using the chemical weapons against Kurds in 1988.⁵⁵ No less divergent from Islamic ethics are the brutal tactics being employed by the terrorists in 2013 in the name of Islam. These self-serving individuals have not only tainted the image of Islam but have also led to confusion on the objectives and conduct of the real *Jihad*.

It needs to be understood that the problem is not with the Islamic laws and rules; it is actually with those who choose not to adhere to the Islamic LoAC for one reason or the other. In fact, the best application of Islamic concept of just war and the use of Islamic LoAC affords the best possible defense against the self-proclaimed proponents of the ill intended militancy in the name of Islam.

Part – III: Just War and LoAC in Islam

Islamic Idea of Just War, Abodes of War, and their Relationship with the Non-Muslims

Today's media has contributed towards confusing perceptions and realities on certain core issues, and terrorism stands no exception. The portrayal of the terrorists as torch bearers of a theocratic policy propagated in the name of Islam has sometimes overshadowed rest of the one billion Muslims. The use of terms like *Holy War*, a faith spread by sword, Islamofascism, and multiple other catchphrases has defamed Islam.⁵⁶ Muslims clearly deny that Islam has anything to do with terrorism and non-essential violence. They assert that Islam does not permit war against non-Muslims based on the religion alone. They further contend that the use of aggression is limited to defensive warfare, preemption to protect the sovereignty of a Muslim state, or the offensive to relieve oppressed populace of another state.⁵⁷ Islamic tradition holds *Jihad* as a highly regarded activity launched for God at a personal or societal front through nonviolent or violent means. Islam treats war as a distasteful necessity, and with an understanding of its violent nature lays elaborate guidance on when and how to conduct it as noted in the following verse:-

“Fighting is ordained for you, though you dislike it. You may dislike something although it is good for you, or like something although it is bad for you: God knows and you do not.” The Holy Quran (2:216)

Prominent Muslim Jurists like Ibn Khaldun have identified four types of warfare in the Islamic World i.e. legal wars like (1) *Jihad* –launched in the way of the God and (2) *Harb* – which refers to all wars launched for legal purposes other than the religious, and the unjust wars termed as (3) the *Fitna* – infighting in Muslims and (4) the wars arising out of the desire for plunder.⁵⁸ Refer appendix C for the graphic representation of the Islamic idea of warfare.

The wars fought during the early period of Islam between Muslims and non-Muslims cannot be classified as ethnic or economic, as often the people from same family or tribe were found fighting on opposing sides in the battles. They can also not be categorized as religious wars because Muslims were simply struggling to retain freedom to exercise their basic human rights, and spend the life under a code of conduct they had preferred for themselves. The persecution and maltreatment suffered at the hands of Pagans afforded them the justification for taking up the arms to regain whatever freedoms had been taken away from them forcefully.⁵⁹ The first verse permitting Muslims to fight reads⁶⁰:-

“Those who have been attacked are permitted to take up arms because they have been wronged—God has the power to help them—those who have been driven unjustly from their homes only for saying, ‘Our Lord is God.’ If God did not repel some people by means of others, many monasteries, churches, synagogues, and mosques, where God’s name is much invoked, would have been destroyed. God is sure to help those who help His cause—God is strong and mighty” The Holy Quran (22: 39-40)

Islam does not permit Muslims to go at war with the enemies for their religious beliefs only, and instead requires it on the basis of their unjust behavior. The time and again quoted persecution refers to the oppression suffered by Muslims at the beginning of Islam such as the forced migration of the Holy Prophet (PBUH) and his followers at the hands of the Pagans from their homeland in Mecca in 622 AD. The Muslims who were happily part of their Pagan families and had enjoyed a respectable place before Islam were prejudiced by the same families and society after its acceptance.⁶¹ Their conversion to Islam subjected them to emotional and physical maltreatment. They faced extinction at the hands of the non-Muslims, as is evident by the repeated Pagan assaults in the shape of Battles of the Badr, the Uhud, the Ditch, and many others in the first decade of Islam at Medina. The Muslims were forced to take up arms to ward off these Pagan assaults.

The permission to fight came after *Quraish*, the leading tribe of Arab Pagans from Mecca, launched a full fledged assault targeting the Holy Prophet (PBUH) and other Muslims at the Battle of Badr in 624 AD. In fact, warfare came to Muslims only as a last resort, when peaceful perusal of their freedoms was not possible anymore. Despite tyranny suffered at the hands of enemies of Islam, the Almighty asked the Prophet (PBUH) to offer them mercy and pardon them , provided they vowed to discontinue their enmity of Islam as noted in the following verse:-

*“[Prophet], tell the disbelievers that **if they desist their past will be forgiven**, but if they persist, they have an example in the fate of those who went before. [Believers], **fight them until there is no more persecution**, and all worship is devoted to God alone: if they desist, then God sees all that they do, but if they pay no heed, be sure that God is your protector, the best protector and the best helper.”* The Holy Quran (8:38-40)

The most common criticism of the Islamic political order leading to war or peace is of the concept of *Abode of Islam* (Dar ul Islam) and *Abode of War* (Dar ul Harb). There exists a misunderstanding in the non-Muslim world on the context, relevance and implications of these terms. There is also a tendency in extremist segments of Muslim world to misuse the idea of abodes as pretext to justify violence against non-Muslims. The lack of clear understanding of these political concepts in non-Muslim world and their malefic usage by the terrorists has distorted the image of Islam and Muslims. Non-Muslims often believe that this concept requires Muslims to wage a constant war against the non-Muslims until infidels become a part of *Dar ul Islam* by embracing Islam. This is an inaccurate interpretation of the concept.

It is relevant to identify that the idea of abodes was not mentioned in the Holy Quran or *Ahadees*. The concept was implied in the later jurisprudence of Islam, and the genesis of the terms has been associated with Imam Abu Hanifa (699-767) – a prominent Muslim

jurist.⁶² The concept of abodes is a political order rather than being a geographical or religious divide as suggested by many western writers. The idea of *Dar ul Harb* identified that the land, state or people were not in treaty with the Muslim *Ummah*, and were expected to attack whenever an opportunity arose. This idea conformed to the prevalent World Order at that time, wherein every state was at war with the other as a function of foreign policy.⁶³ The concept of war was considered quintessential to attainment of policy objectives, and was not subject to any commonly agreed international rules.⁶⁴ As noted in earlier examples, Islam under those violent circumstances as well did not permit unconsidered initiation of warfare, and laid down clear instructions on Jus ad bellum.

The concept of abodes in its classical sense is no longer viable in twenty first century. The Muslims are no longer a part of the *Ummah*, as was envisaged by the early Islam. The World has become more interdependent as an aftermath of the two world wars. An increasing number of alliances, treaties, and emergence of regional and global organizations have changed the dynamics of international relations. In Muslim world, the older arrangement of the empires, kingdoms and sultanates has given way to nation states that, despite following the common Islamic Law, have divergent national interests driven by respective political, economic, and military considerations.

Most of the discussion on the concept of Abodes ignores another important modern term *Abode of Reconciliation* (Dar ul Sulh), which lends a clearer understanding of the political order of Islam.⁶⁵ The term sums up the essence of international relations in modern times and refers to the states which are not governed by the Islamic Law but have concluded treaties for peaceful coexistence. It can therefore be inferred that a Muslim state can be in a state of virtual peace through a treaty or else at war, if a treaty has not been concluded.

The Islamic scripture reiterates that victory in the relationship of the states can be won by employing means other than war as well. The Holy Quran notes in a verse while referring

to the peace treaty of Hudaibiyyah “*Truly, We have opened up a path to clear triumph for you [Prophet]*” (48:1). It sufficiently denies the misperception that Islamic policy is centered on the violence; rather it enunciates that the war is one of the means towards achievement of political objectives for Muslims. The Holy Quran clearly states the interaction with the enemies and contemporaries in following verse:-

“And God does not forbid you to deal kindly and justly with anyone who has not fought you for your faith or driven you out of your homes: God loves the just. But God forbids you to take as allies those who have fought against you for your faith, driven you out of your homes, and helped others to drive you out: any of you who take them as allies will truly be wrongdoers.” (60:8-9)

Islam does not prohibit treaties with the non-Muslims who are not threatening Muslims and are not attempting to persecute them politically, socially, religiously, or culturally. One of the earliest examples of the treaties is found in the treaty concluded with the Jews, the Christian, and other Arab tribes by the Holy Prophet (PBUH) upon his arrival at Medina after the Migration of 622 AD. The treaty aimed at mutual respect for culture and religion of each other, while guaranteeing multilateral security cooperation.⁶⁶ The treaty was only abrogated when Muslims found out that it was not being kept by their allies, who were found to be colluding with *Quraish* of Mecca secretly in 625 AD.⁶⁷

The Holy Quran asserts in another verse:-

“Who, whenever you [Prophet] make a treaty with them, break it, for they have no fear of God. If you meet them in battle, make a fearsome example of them to those who come after them, so that they may take heed. And if you learn of treachery on the part of any people, throw their treaty back at them, for God does not love the treacherous.” (8:56-58)

At another place, the Holy Quran clarifies the fate of those who exercise deceit in the mutual treaties and don't abide by them in following verse:-

*“But if they break their oath after having made an agreement with you, if they revile your religion, then fight the leaders of disbelief—oaths mean nothing to them—so that they may stop. **How could you not fight a people who have broken their oaths, who tried to drive the Messenger out, who attacked you first?** Do you fear them? It is God you should fear if you are true believers. Fight them: God will punish them at your hands, He will disgrace them, He will help you to conquer them, He will heal the believers’ feelings.”* (9:12-14)

The above quoted verses demonstrate that the reason for subjecting the non-Muslims to a war is not their faith alone, but the deviation from a mutually agreed peace treaty. Islamic concept of faith hinges on tolerance of other religions, particularly the religions of the Book:-

“Say [Muhammad], ‘We [Muslims] believe in God and in what has been sent down to us and to Abraham, Ishmael, Isaac, Jacob, and the Tribes. We believe in what has been given to Moses, Jesus, and the prophets from their Lord. We do not make a distinction between any of the [prophets]. It is to Him that we devote ourselves.’ The Holy Quran (3:84)

One of the preconditions for waging *Jihad* is that the ruler or leader of the *Ummah* should have sanctioned it in the light of Islamic teachings on warfare.⁶⁸ It is relevant to highlight that Islam combines religious and political powers in the leader of *Ummah*. However, it necessitates that the ruler ought to be Muslim of highest order and must be popular for his piety, moral values, and righteousness.

Having addressed the question of Islamic idea of war, it is relevant to analyze Islamic treatment of non-Muslims, and find whether forced conversion is an Islamic commandment or otherwise. While it has been abundantly made clear in Islamic scriptures that every Muslim is responsible to take message of Islam to the ear of every non-Muslim, it has also been instructed that use of force does not drive this effort. Islam is not a religion of violent following, and vouches same for others as well as quoted in following verses:-

“There is no compulsion in religion: true guidance has become distinct from error, so whoever rejects false gods and believes in God has grasped the firmest hand-hold, one that will never break. God is all hearing and all knowing.” The Holy Quran (2:256)

The peace treaty of *Hudaybiyyah* concluded in 628 AD between the *Quraish* of Mecca and Muslims, and its aftermath are the perfect illustration of Islamic instructions on the peace treaties with non-Muslims. The Muslims made numerous concessions in this treaty for overall good and to avoid undue bloodshed. They were forthcoming in working out the peace treaty and then following it in true letter and spirit; wherein, they had to handover some of the newly convert Muslims back to the *Quraish* under the treaty's obligations despite fears for the safety of those individuals and their families. On the other hand, they were equally aggressive in attacking Mecca when the *Quraish* chose not to uphold the treaty.⁶⁹ This demonstrates that the Muslim idea of a treaty is not only theological, but contributes to the mutual benefit of the international community. Muslims are not to be inclined towards conflict for the sake of conflict, but only take up arms when some other entity is bent upon hostility against them. Muslims feel themselves obligated towards bilateral or multilateral agreements of the regional or international character, whether with other Muslims or non-Muslims. The Holy Quran in the following verse also emphasized the importance of honoring the treaties when made:-

“But if they incline towards peace, you [Prophet] must also incline towards it, and put your trust in God: He is the All Hearing, the All Knowing.” (8:61)

Islam does not permit making friends with those who render active support and help the enemies of Muslims. The Holy Quran states:-

“But God forbids you to take as allies those who have fought against you for your faith, driven you out of your homes, and helped others to drive you out: any of you who take them as allies will truly be wrongdoers.” (60:9)

Islam recognizes the right of preemption to initiate a conflict provided the circumstances justify it under Islamic idea of warfare. The history of Islam provides numerous examples of the battles where Muslims undertook preemptive strikes to avert an assault from their enemies. The prominent occasions include the Battles of Khyber and Mu'tah in 629 AD. A study of these battles indicates that they were conducted in accordance with dictates of modern norms of preemptive strike wherein, Muslims had detailed intelligence on the preparations of enemy forces for impending war,⁷⁰ and were not strong enough themselves to absorb enemy assault first. However, Islam has clearly enunciated that use of warfare for personal aggrandizement is not permitted. The use of force against a population which has opted against the use of force against Muslims and abstains from continuing usage of the force is unethical and un-Islamic. The Holy Quran states:-

*“So, you who believe, be careful when you go to fight in God’s way, and **do not say to someone who offers you a greeting of peace, ‘You are not a believer,’ out of desire for the chance gains of this life**—God has plenty of gains for you. You yourself were in the same position [once], but God was gracious to you, so be careful: God is fully aware of what you do.” (4:94)*

Islam does not permit taking up of the arms within an Islamic society to correct wrong doing. It terms all such violent attempts to de-stabilize the Islamic society as *Fitna*. Historically, such attempts at use of violence have not been allowed. Islam prescribes that Muslims adopt peaceful means to voice their concerns. Muslim states like Saudi Arabia, Pakistan, Yemen, Nigeria, and Sudan confronted with terrorism have been forced to combat militancy within their borders as a consequence of Global war on Terrorism. The unjustified use of violence and terror tactics within an Islamic state has afforded an opportunity to these countries to employ the Islamic just war theory and LoAC to render the extremist elements invalid through de-legitimization of their pretext for taking up arms and use of violence.

Islamic LoAC for External and Internal Conflicts

The blatant use of force and gruesome terror tactics by terrorist groups in the name of Islam has led to the perception that Islam as a religion condones brutality, and permits targeting of innocent women and children. Islam recognizes that the objective of violence is not territorial gains and therefore lays guidance for humane conduct during the war.

The blame for the false perception is shared by Islamic World which did not make institutionalized efforts to introduce the others to Islamic idea of the ethics of war and human rights in the evolving socio-political realities of the twentieth century. The sole recognizable effort came to fore in shape of the Cairo Declaration of Human Rights in Islam which was adopted by the member states of Organization of the Islamic Cooperation (OIC) in 1990. The declaration has twenty five articles which deal with human dignity and assert the importance of respecting human values irrespective the socio-ethnic divides (refer appendix D for the details of the Cairo Declaration).

Islam does not promote total violence even in the sanctioned battles, and continues to give spirituality in the struggle a greater significance than ruthlessness.⁷¹ It lays clear instructions for its followers to observe when engaged in the battle. Islamic jurisprudence on war revolves around five primary principles namely righteous cause for a just war, discrimination between the combatants and non-combatants, adoption of a measured response characterized by avoidance of aggression, humanity, and accepting an offer of peace during an armed conflict.⁷² Islamic jurisprudence draws no distinction between the LoAC for the internal or external conflicts. It grants similar rights to those at the other end of the sword in both types of the conflict. Islamic LoAC is comparable to the basic principles of modern international LoAC adopted in the twentieth century.⁷³ The forbearing premise of both LoAC dictates use of controlled aggression and the distinction between the combatants and the non-

combatants. Islamic LoAC have been discussed in details in subsequent paragraphs (refer appendix E for the graphic representation of the Islamic LoAC).

Islam gives highest place to the human dignity and considers all human beings equal in terms of their basic rights. It gives great importance to the value of life and lays special emphasis on its protection. The idea of preciousness of human life, whether of a Muslim or his enemy, remains a central instrument of Islamic LoAC. The Holy Quran warns against taking the life of an innocent by declaring that:-

“.....if anyone kills a person—unless in retribution for murder or spreading corruption in the land—it is as if he kills all mankind, while if any saves a life it is as if he saves the lives of all mankind.....” (5:32)

The Islamic idea of warfare envisages the use of force as a means to protect the peace, and uphold the ideals of justice and human rights. The protection of weak and undefended remains priority principle to Islamic laws of war and peace.⁷⁴ The Holy Quran states:-

*“Why should you not fight in God’s cause and **for those oppressed men, women, and children who cry out**, ‘Lord, rescue us from this town whose people are oppressors! By Your grace, give us a protector and give us a helper!’?” (4:75)*

The hostilities must not be initiated unless forced by the requirements of preemption or to help the oppressed. In all cases, the initiation of the hostilities must be preceded by an offer of peace. The Holy Quran states:-

“but turn away from them and say, ‘Peace’: they will come to know.” (43:89)

The Holy Prophet (PBUH) further reinforces the commandment by saying:-

*“Do not wish for an encounter with the enemy. Pray to the God to grant you security, but **when you (have to) encounter them, exercise patience**, and you should know that Paradise is under the shadow of the swords.”⁷⁵*

The war has to be a collective act conducted by organized forces, and sanctioned by the accepted ruler. The individual fighting is only with one's inner self to alleviate evil inclinations in the heart. The individual Muslims are obligated to take part in *Jihad*, however, the contribution is not limited to the use of violent means only. Islam takes into account abilities of individuals and does not require everyone to participate in the *Jihad* through violent means. Most of the modern scholars caution against sending non trained ordinary citizens to take part in *Jihad* in view of the advancement of the warfare and complex weapon systems in vogue.⁷⁶ The individuals who are not trained to undertake armed struggle can support the cause through financial means, by use of their voice, or through writing prowess to motivate the soldiers. Nonetheless, the non-Muslims of the Islamic society are not obliged to take part in the *Jihad* unless voluntarily desirous.

The use of force must not be the tool to achieve conversion of non-Muslims. Islam accepts the status of the Christians and the Jews as people of the book and permits peaceful co-existence with them as long as they do not pose threat to the *Dar ul Islam*.

“So [Prophet] warn them: your only task is to give warning, you are not there to control them. As for those who turn away and disbelieve, God will inflict the greatest torment upon them. It is to Us they will return.” The Holy Quran (88:21-23)

The Holy Quran states at another place:-

“Say, ‘Now the truth has come from your Lord: let those who wish to believe in it do so, and let those who wish to reject it do so.’ We have prepared a Fire for the wrongdoers that will envelop them from all sides.....” (18:29)

The peace overtures from would be the enemy must be accepted to avoid unnecessary bloodshed. The treaties can be concluded to make the peace long lasting and must be respected by Muslims at all costs. The Holy Quran states:-

“..... But as for those who seek refuge with people with whom you have a treaty, or who come over to you because their hearts shrink from fighting against you or against their own people, God could have given them power over you, and they would have fought you. So if they withdraw and do not fight you, and offer you peace, then God gives you no way against them.” (4:89-90)

The use of force must remain controlled and unnecessary destruction must be avoided. The use of torture and terror tactics to intimidate civilians is strictly forbidden. Islam recognizes that the non-combatants are not a direct contributor to the war effort, and therefore must be spared from the wrath. The sayings attributed to the Holy Prophet (PBUH) reinforce the instruction of the Quran by directing not to kill the old, children or women. He also ordered not to kill the religious leaders or those inside the prayer places like churches and synagogues.⁷⁷

While Islam gives highest place to the martyrs, it strictly forbids the use of suicide tactics to further the war effort. Islam maintains that the life of a human being is a sacred gift from the God which cannot be wasted unnecessarily. The Holy Quran directs:-

“.....do not take the life God has made sacred, except by right. This is what He commands you to do: perhaps you will use your reason.” (6:151)

The Holy Prophet (PBUH) said, *“He who kills himself with anything, Allah will torment him with that in the fire”*⁷⁸. In modern times, some Muslim jurists have argued over legality of suicide bombings under the principle of necessity, particularly in the context of the cases like the Palestinians who suffer an overwhelming military disadvantage against the Israelis. Nonetheless, there exists an agreement that the use of suicide tactics against the non-combatants is not permitted under any eventuality.

The use of force must be ended as soon as the adversary accepts defeat and declines further use of the force. The defeated people must not be subjected to indiscriminate use of

the force. They must be granted the liberty to exercise their social and religious obligations in lieu of the poll tax as discussed earlier. As quoted earlier in the verse 8:61 of the Holy Quran, Muslims have been directed to avoid undue fight when the enemy declines it. Similarly, the Holy Quran states at another place about the individuals who give up fight:-

“If any one of the idolaters should seek your protection [Prophet], grant it to him so that he may hear the word of God, then take him to a place safe for him, for they are people with no knowledge [of it].” (9:6)

The prisoners of war are required to be treated humanely and not harmed. The Holy Prophet (PBUH) asked Muslims not to kill the prisoners and attack those who have been wounded in the fight.⁷⁹ He (PBUH) directed Muslims to refrain from attacking those who are already in captivity or have been found tied. The Holy Quran states at two different places:-

*“When you meet the disbelievers in battle, strike them in the neck, and once they are defeated, **bind any captives firmly—later you can release them by grace** (which to some commentators means a better way) **or by ransom**—until the toils of war have ended. That [is the way].....” (47:4)*

“They give food to the poor, the orphan, and the captive, though they love it themselves, saying, ‘We feed you for the sake of God alone: We seek neither recompense nor thanks from you.’” (76:8-9)

Islamic law strictly prohibits plunder and destruction at the conclusion of the military engagement. Muslims were directed by the Holy Prophet (PBUH) not to wreak undue havoc onto the enemy property and resources.⁸⁰ Muslim forces were instructed not to destroy crops, the fields, the gardens, and the cattle. It does not permit Muslims to steal from the resources of the conquered nation. It, however, does permit collection of war spoils that result from the legitimate treaties concluded at the end of the war. The practice was not contrary to the prevalent norms of warfare then, nor is it now. According to Islamic scriptures and

explanation by the jurists, the spoils of war have to go the state for preparations to protect the religion, disbursement to the combatants as war expenditure, and to finance welfare measures of the state for the poor and needy.⁸¹

Islamic Law prohibits mutilation of dead bodies and directs that bodies of slain enemy soldiers must be promptly returned at the conclusion of the battle. During the Battle of Uhud, the enemy mutilated bodies of many Muslim soldiers including an Uncle of the Prophet (PBUH), but he asked his companions to refrain from a corresponding avenging action.⁸²

The Islamic LoAC is not very descriptive about the conduct of air and naval battles. Similarly, the basic scriptures do not treat weapons of mass destruction elaborately. Islamic jurists had not laid a lot of emphasis so far on developing the jurisprudence over the use of nuclear weapons and application of chemical and biological weapons. The absence of specific laws on these subjects is attributable to the evolution of modern technology over the last century. A lot of research work is being done by Muslim jurists currently; however, the manuscript laws have not evolved yet. Nonetheless, the essence of Islamic Law can be applied to the both dimensions of warfare to work out the detailed legislation on development and use of these weapons.

Part – IV: A Case Study of Islamic LoAC and Idea of Just War

The Conduct of Anti-Terrorist Campaign in Pakistan and the LoAC

The ongoing conflict in Pakistan against the militants operating in the western parts of the country and elsewhere is unique in its nature. The conflict depicts how Islamic LoAC and the IHL can complement each other for betterment of the country and the humanity. The conflict erupted as a direct consequence of the United States onslaught against the Taliban and Al Qaeda in Afghanistan. The participation of Pakistan in the war on terror and the turbulence prevalent in Afghanistan have created the most conducive conditions for the militants to challenge the writ of the government. The militants dislodged from Afghanistan, who comprised Arabs, Pakistanis, Afghans and some Central Asian Republics nationals mainly, sought refuge in the tribal belt of Pakistan designating themselves Pakistani Taliban.⁸³ They included remnants of Afghan Jihad, who got active to oppose the United States invasion, and other vested interest groups from Central Asian Republics.

These militants were weary of Pakistan's continuous support to the international coalition led by the United States in Afghanistan. As Pakistani security forces initiated operations to evict militants from tribal belt and tried to prevent them from operating against the Coalition forces, their objective shifted from the US opposition to operations against Pakistan. The militants now followed a path separate from Afghan Taliban in terms of their operations and agenda. They have challenged the writ of the government and the constitution of Pakistan by labeling it non-Islamic. They vow to establish true Islamic *Shariah* in Pakistan, a version of Sharia imposed by Taliban in Afghanistan. It is an ill-conceived and illegitimate attempt in a country which is already an Islamic Republic, has a population of 97 % Muslims, and the constitution which is based on Islamic jurisprudence. The militants are employing extreme violence and terrorism in the name of Islam to achieve their vested agenda.

The militants are not one group, nor is their agenda same. Tehreek e Taliban Pakistan (TTP) has been formed as a result of merger of numerous small groups operating in the tribal belt of Pakistan. Initially, these groups fought Pakistani armed forces in individual group capacity but combined together in 2007 under the umbrella organization TTP with Bait Ullah Mehsud as its leader.⁸⁴ They comprise the terrorist groups like Pakistani Taliban, Islamic Movement of Uzbekistan, Lashkar i Jhangvi, Sipah i Sahaba Pakistan, Jaysh e Muhammad and other minor groups. They have different origins and have been brought together by the operational exigencies alone.⁸⁵ TTP and other terrorist elements are neither political entities nor they are signatories to any international law. Most of them have been listed as a terrorist organization by the United Nations Security Council and numerous other countries since 2011.⁸⁶ These groups do not subscribe to the national or international LoAC and instead claim allegiance to the Islamic LoAC, though their conduct appears at tangent to that too. Their operations are targeted against Pakistani security forces and general populace. Their operations in Afghanistan against coalition forces are almost nonexistent at the moment. Refer brief summary of stated objectives and operational procedures of militant groups at appendix F.

The conflict, despite its transnational implications, is an internal affair to Pakistan. There exists a discussion on whether the conflict is non-international or internal in nature. The government contends that the conflict is a function of law and order situation whereas some observers label it as a non-international conflict.⁸⁷ If considered a law and order state, the IHL embodied by Geneva and Hague conventions does not cover internal conflicts effectively. The customary IHL which has greater implications for non-international conflicts is finding an increasing acceptance amongst the nations but is not legally binding onto the parties to the conflict. In case considered a non-international conflict, the Common Article 3 of Geneva conventions applies to both sides to the conflict (refer appendix G for details of the

Common Article 3).⁸⁸ The article towards its end clearly stipulates that application of its provisions will not affect the legal status of the Parties to the conflict. The national constitution of Pakistan, which is based on Islamic LoAC, plays a pivotal role in driving the conduct of the Law Enforcement Agencies (LEAs) in operations against terrorist. The LEAs are also sufficiently trained on international humanitarian laws. In addition, the provincial and tribal area laws also play a vital role in shaping the behavior of the LEAs. Resultantly, the militant elements when arrested are treated in accordance with the national and provincial criminal and anti-terrorism laws.

The adherence to the international and Islamic LoAC by LEAs has resulted into an environment where excesses being committed by the terrorists enhance antagonism against them in the population. The LEAs bound by these ethical laws have restrained from indiscriminate use of the force despite brutal methods employed by the militants against them. As both sides subscribe to the Islamic LoAC and militants unlike LEAs don't abide by IHL, therefore, it is prudent to evaluate their conduct in the light of Islamic laws instead of the IHL.¹

The Islamic law of war has helped the nation to discredit the militants operating under the banner of TTP.² One of the stated objectives of the TTP is to establish an Islamic state in Pakistan enforcing their extremist ideology and extending it to surrounding regions.⁸⁹ They have also been quoted as waging a defensive *Jihad* against the Pakistani LEAs who are obstructing them from engaging the United States forces in Afghanistan.⁹⁰ The population of the country at large understands and renounces the demand of TTP for enforcement of their perceived version of *Shariah*. The TTP overlooks the fact that the country has a democratic

¹ For the purposes of simplicity, the paper is not intended to discuss the moral ethics of employment of drones by the United States in the tribal belt of Pakistan to target individual Taliban leaders and other groups which leads to undue collateral damage. The arbitrary nature of drone engagement resulting into the deaths of civilians is not in line with the Islamic or international laws and remains a subject of an ongoing debate.

² The paper employs TTP as an example to discuss conduct of militants groups employing terrorist tactics in Pakistan to facilitate the evaluation of legality of war and the LoAC in an Islamic state with an Islamic constitution.

government which is representative of the people and is the legitimate authority in line with the Islamic constitution in vogue since 1973. They ignore that Pakistan is an Islamic state whose constitution gives supreme importance to Islamic laws, and has been drafted in accordance with these laws.⁹¹ They also fail to take into account the reality that the ideal environment for the caliphate does not exist anymore due to disintegration of the Islamic *Ummah* into the nation states.⁹²

TTP claims to have launched *Jihad* against Pakistan Government but falls short of justifying two important preconditions of *Jihad* for any Muslim i.e. fight against the persecution, and sanctioning of *Jihad* through legitimate ruler clauses.⁹³ Islamic law states that the *Jihad* is a group task and not an individual obligation. It has to be sanctioned by the ruler in line with Islamic teachings. The most important clause of Islamic law entails the *Jihad* to be launched against persecution of Muslim. There is no persecution being suffered by Pakistanis at the hands of state institutions. Every Pakistani enjoys his rights and freedom in line with the national constitution. The TTP has not been able to show how the Pakistani Government has persecuted its majority Muslim population. To the contrary, Islam does not condone the individuals who create anarchy within the Islamic society and employ armed tactics without using peaceful political means first. The TTP and its affiliates have therefore been banned by the Government of Pakistan under anti-terrorism law in 2008.⁹⁴

TTP uses most brutal tactics to intimidate security forces and the civilian population. Their tactics range from indiscriminate killing of non-combatants, use of mass murder weapons like high explosive bombs at public places, employment of suicide bombers to target innocent women and children, beheadings, and the mutilation of dead bodies. Since the first attack in 2002, Pakistan has suffered over 30 suicide attacks every year costing thousands of life while leaving many more with amputations.⁹⁵ None of these terrorist tactics is in line with the Islamic LoAC. These attacks drew no distinction between the combatants

and the non-combatants. The attacks being conducted at crowded sites in the urban centers killed far more number of the non-combatants than the LAEs. Such a blatant disregard for human life is in contravention to the spirit of Islamic LoAC. Unfortunately, TTP is undertaking this brutality in the name of self-proclaimed *Jihad* which is a very sacred activity resorted to for the God himself, and warrants employment of highest order of moral ethics as discussed earlier.

The mere difference of the opinion has subjected many learned scholars, women and children to the worst terror tactics at the hands of the TTP and other militant groups. Most recently, TTP has targeted two members of provincial assembly and over 250 innocent civilians in five different incidents at the beginning of 2013 within a span of 50 days. The Holy Quran has laid explicit instructions on when a person can be subjected to death as a result of his crime, and that too not without being incriminated through due judicial process. Unfortunately, none of criterion of the extremists meets Islamic instructions.⁹⁶ The militants resort to non-contextual utilization of various verses of the Holy Quran and *Ahadees* at times to justify their acts but remain short of legitimizing their brutal methods.

The conflict in Pakistan is not only driven by Islamic Law but also by the national laws which are based on Islamic and international jurisprudence. The Objective's Resolution, passed by the constituent assembly of Pakistan in 1949 and covered under article 2 of the constitution, is the most important foundation of the constitution that sets the tone for undisputed upholding of fundamental rights in line with Islamic *Shariah* (refer appendix H for the details of the Objective Resolution). The constitution of Pakistan in line with Islamic Law clearly states the inalienable rights of an individual in its Chapter 2, which is applicable to the militants of Pakistani origin as well (refer appendix I for details of relevant clauses of the constitution). A reference to discussion in part II and III of this paper highlights that these provisions of the constitution conform to the spirit of Islamic idea of human rights and LoAC.

That is why, the Government of Pakistan has not yet enforced emergency in the tribal areas or any other part of the country to uphold the human rights of the individuals. Resultantly, the militants are able to get safe custody, fair trial, and right to bail under the constitutional provisions. In fact, the LEAs often complain that the sophisticated nature of the crimes committed by the terrorists and the non-availability of credible evidence remain a shortfall which often leads to their acquittal in the courts under the provisions of law. The situation indicates that the fair trial is being afforded to the suspects of terrorist acts.⁹⁷

In addition, Pakistan Army Act 1952 stipulates stringent action against violators of LoAC. The Army uses court martial to try individuals held responsible for violations of the LoAC in the light of Islamic law and the Army Act. Sections 25, 29, 33 and 41 besides numerous other sections of the Army Act are aimed at deterring violations of human rights of the enemy combatants in all dimensions of the conflict.⁹⁸ They focus on treatment of the enemy soldiers, plunder, indecent conduct and undue damages to the property and human life. Act also permits the subordinates to choose not to follow an unlawful command. This has resulted in very few cases of alleged human rights violations by the LEAs in Pakistan.

There have been some reports of alleged missing persons at the hands of intelligence agencies both civil and military but those are yet to be substantiated or proven in the court of law. Meanwhile, the militants continue to follow a policy of deliberately targeting civilians and their property to intimidate them from supporting the LEAs. They have not drawn distinction in killing the children, women, elderly, students, scholars, the soldiers or the innocents.

Conclusion

Islam provides a complete code of conduct for its followers in all spheres of the human life. Its influence in the military sphere is no less pronounced. Islamic scriptures lay down the basic foundation for evolvement of the Islamic jurisprudence on peace and warfare. The concept of just war has been elaborately covered in the basic scriptures and defines the *casus belli* for Muslims in no uncertain terms.

It is important, however, to understand the circumstances under which various verses of the Holy Quran were revealed as a precursor to understanding the contextual meanings of a particular verse. The out-of-context quoting of the verses by the vested interest groups has confused the understanding of the essence of Islamic concept of warfare. There is certainly some difference of opinion between Muslims in terms of application of the idea of a legitimate war in current international politico-social environment of the world, which is not uncommon to other great religions of the world as well. Islam holds great respect for human dignity and makes human rights the corner stone of any Muslim society. Islam does not hold any distinction in Muslim society between Muslims and non-Muslims in terms of human rights. Non-Muslims have been granted equal rights to practice their freedom of religion and social customs. The forced conversion of non-Muslims to Islam is strictly forbidden and has not been encouraged.

Islamic LoAC carry respect for human rights into the warfare as well. The laws are explicit and hinge on the principles of controlled use of force, compassion, and distinction between the combatants and non-combatants.

The ongoing conflict in Pakistan against the militants has demonstrated the application of the true Islamic concept of war as well as the LoAC by the LEAs. The correct employment of the laws by the LEAs has rendered the militants invalid and has isolated them from the support of the populace. The conflict has also shown that there exists a greater

compatibility between the IHL and Islamic LoAC which, if skillfully used, can produce rich dividends for the World peace. The need, however, is for exploring this compatibility at international level and developing a mutually acceptable framework. There is also a need to enhance the awareness on Islamic concept of warfare in the west to promote better mutual understanding.

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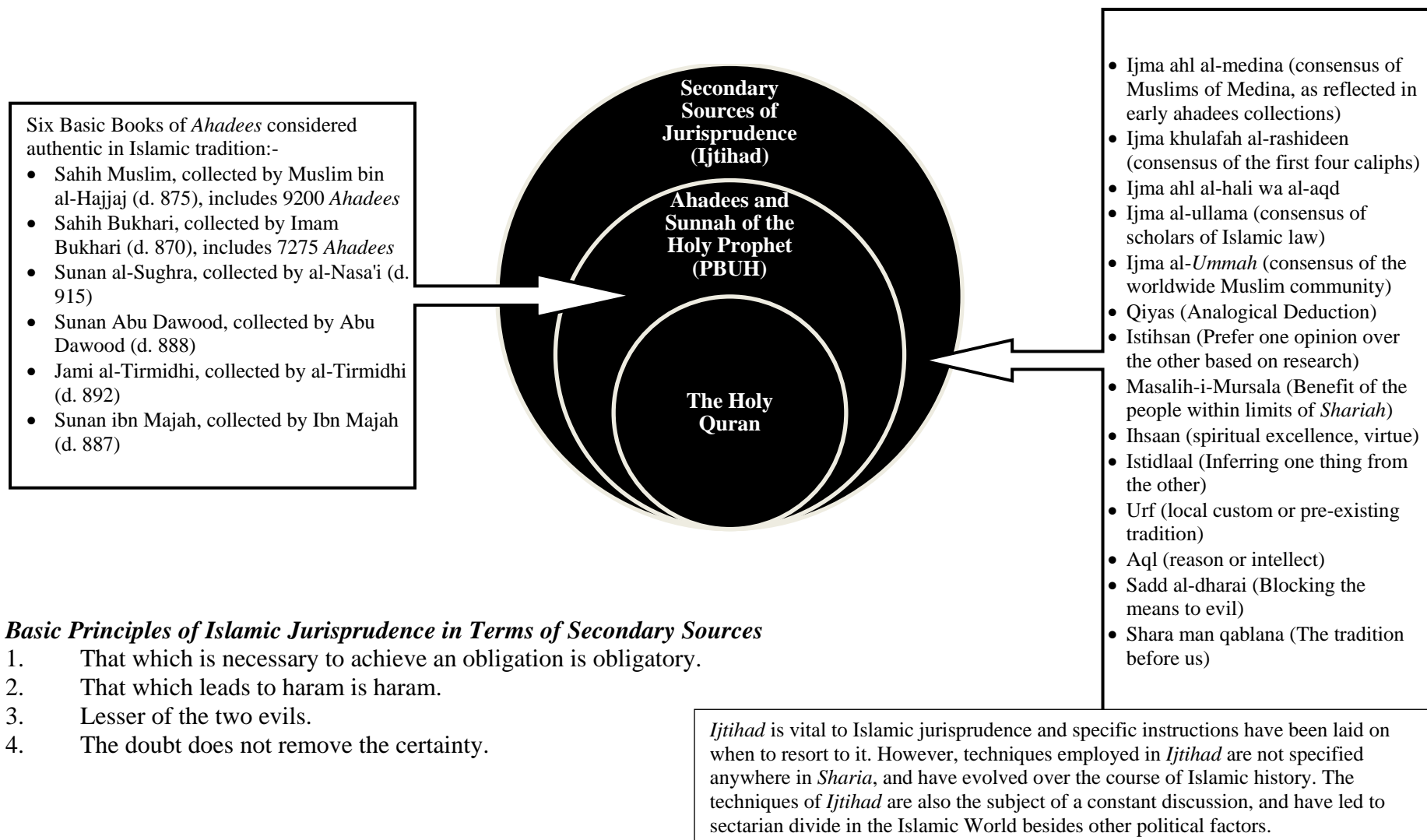
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The Sources of Islamic Jurisprudence⁹⁹



Relevant Parts form the Last Address of the Holy Prophet (PBUH) at the Eve of Hajj¹⁰⁰

This sermon was delivered on the Ninth Day of Dhul-Hijjah 10 A.H. in the 'Uranah valley of Mount Arafat' in Mecca.

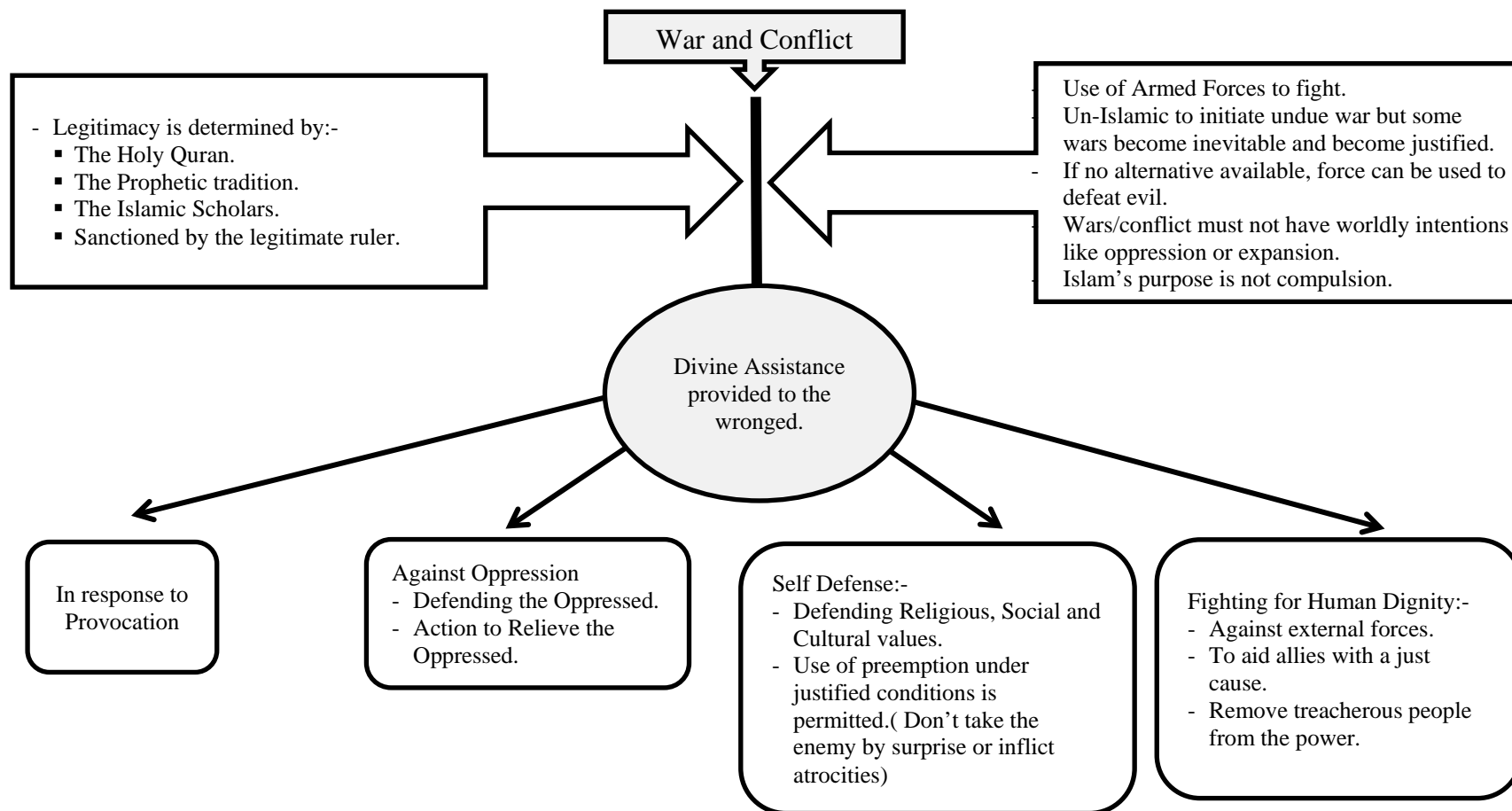
.....O People, just as you regard this month, this day, this city as sacred, so regard the life and property of every Muslim as a sacred trust. Return the goods entrusted to you to their rightful owners. Hurt no one so that no one may hurt you. Remember that you will indeed meet your Lord, and that He will indeed reckon your deeds.....

O People, it is true that you have certain rights with regard to your women, but they also have rights over you. Remember that you have taken them as your wives only under Allah's trust and with His permission. If they abide by your right, then to them belongs the right to be fed and clothed in kindness. Do treat your women well and be kind to them for they are your partners and committed helpers. And it is your right that they do not make friends with any one of whom you do not approve, as well as never to be unchaste.....

All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a white has no superiority over black nor a black any superiority over white - except by piety and good action.....

Remember, one day you will appear before Allah and answer your deeds. So beware, do not stray from the path of righteousness after I am gone.

An Overview of Islamic Concept of Just War



The Cairo Declaration of Human Rights in Islam¹⁰¹

(Only relevant parts of the Declaration are summarized below)

Basic Principles

1. Reaffirming the civilizing and historical role of the Islamic *Ummah*.
2. **Wishing to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah.**
3. Convinced that mankind is still, and shall remain, in dire need of faith to support its civilization and of a self-motivating force to guard its rights;
4. Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion.

Summarized Articles of the Declaration relevant to LoAC

1. **Article I**
 - a. All human beings are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, color, language, sex, religious belief, political affiliation, social status or other considerations.
 - b. No one has superiority over another except on the basis of piety and good deeds.
2. **Article 2**
 - a. Life is a God-given gift and the right to life is guaranteed to every human being.
 - b. It is forbidden to resort to such means as may result in the genocidal annihilation of mankind.
 - c. The preservation of human life throughout the term of time willed by God is a duty prescribed by Shari'ah

- d. Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a *Sharia*-prescribed reason.

3. **Article 3**

- a. In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old man, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate dead bodies. It is a duty to exchange prisoners of war and to arrange visits or reunions of the families separated by the circumstances of war.
- b. It is prohibited to fell trees, to damage crops or livestock, and to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

4. **Article 4.** Every human being is entitled to inviolability and the protection of his good name and honor during his life and after his death. The state and society shall protect his remains and burial place.

5. **Article 6**

- a. Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.
- b. The husband is responsible for the support and welfare of the family.

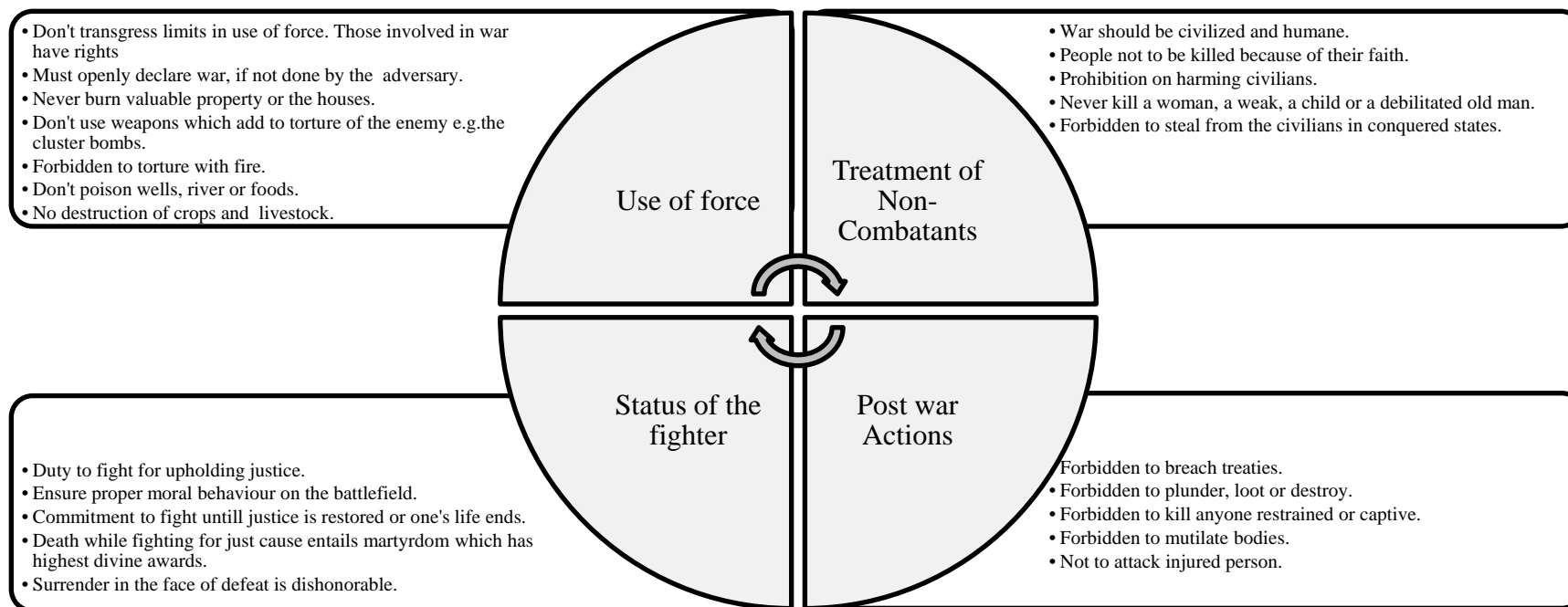
6. **Article 8.** Every human being has the right to enjoy his legal capacity in terms of both obligation and commitment, should this capacity be lost or impaired, he shall be represented by his guardian.

7. **Article 10.** Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.
8. **Article 11**
- a. Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High.
 - b. Colonialism of all types being one of the most evil forms of enslavement is totally prohibited.
9. **Article 15**
- a. Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general.
 - b. Confiscation and seizure of property is prohibited except for a necessity dictated by law.
10. **Article 18**
- a. Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property.
11. **Article 19**
- a. All individuals are equal before the law, without distinction between the ruler and the ruled.
12. **Article 20.** It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation

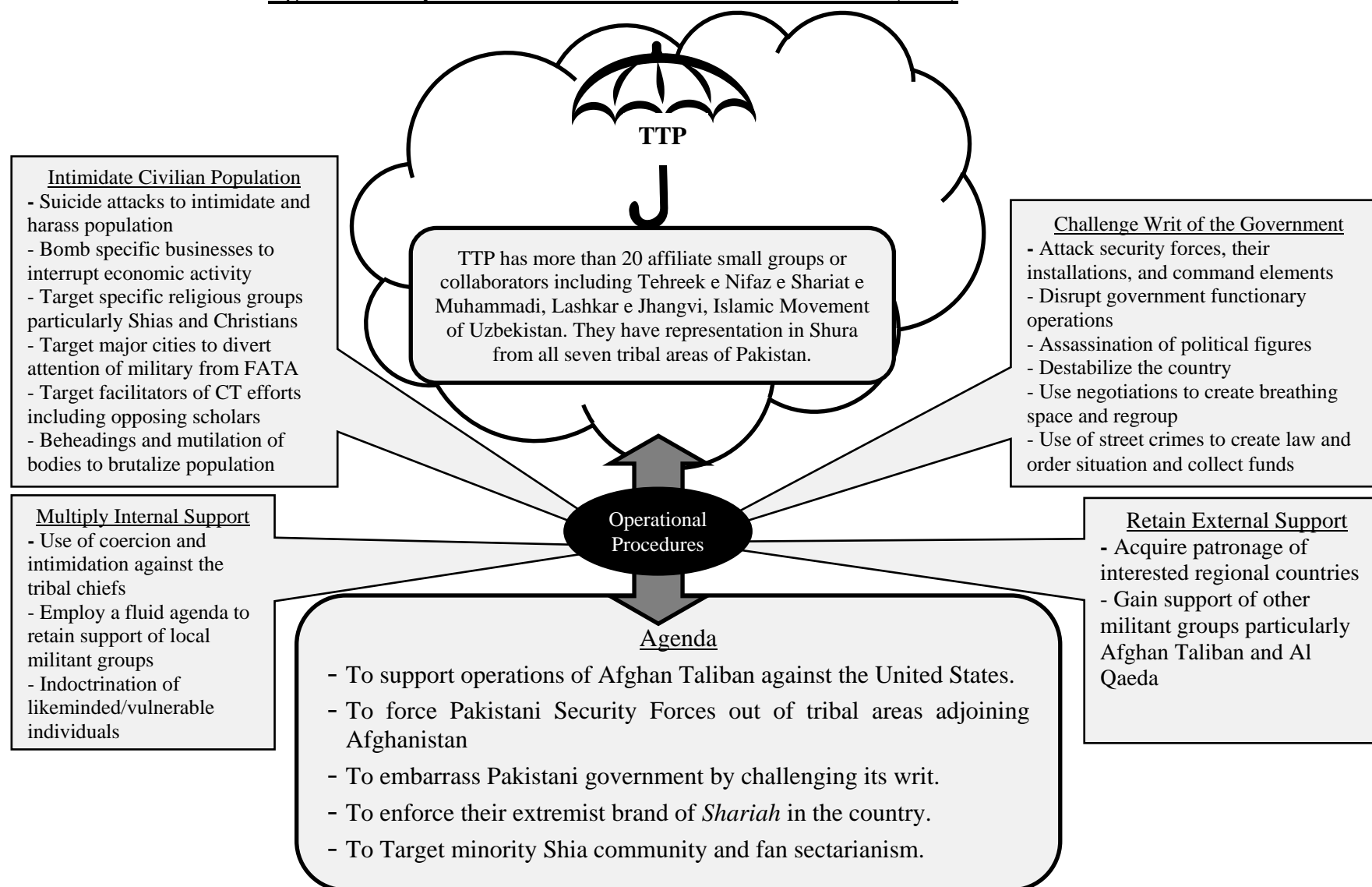
without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

13. **Article 21.** Taking hostages under any form or for any purpose is expressly forbidden.
14. **Article 23.** Authority is a trust; and abuse or malicious exploitation thereof is absolutely prohibited, so that fundamental human rights may be guaranteed.
15. **Article 24.** All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.
16. **Article 25.** The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

An Overview of Islamic LoAC



Agenda and Operational Procedures of Tehreek e Taliban (TTP)^{102, 103 & 104}



Article 3 of Convention (III) relative to the Treatment of Prisoners of War

Geneva, 12 August 1949¹⁰⁵

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b. taking of hostages;
- c. outrages upon personal dignity, in particular humiliating and degrading treatment;
- d. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- e. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The Objectives Resolution ¹⁰⁶

The Objectives Resolution was passed by the Constituent Assembly of Pakistan in March, 1949, and was made a substantive part of the Constitution of Pakistan by P.O (Presidential Order) .No.14 of 1985, Art.2 and Sch.item 2 (with effect from March 2, 1985).

Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust;

This Constituent Assembly representing the people of Pakistan resolves to frame a Constitution for the sovereign independent State of Pakistan;

1. Wherein the State shall exercise its powers and authority through the chosen representatives of the people;
2. **Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed;**
3. Wherein Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the *Sunnah*;
4. Wherein adequate provision shall be made for **the minorities to [1][freely] profess and practice their religions and develop their cultures;**
5. Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;
6. **Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of**

thought, expression, belief, faith, worship and association, subject to law and public morality;

7. Wherein adequate provisions shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

8. Wherein the independence of the Judiciary shall be fully secured;

9. Wherein the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded;

10. So that the people of Pakistan may prosper and attain their rightful and honored place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity.

The Chapter 1 of the Part II of the Constitution of Pakistan¹⁰⁷

The Chapter 1 of the Part II has 21 articles in total but for the purposes of objectivity only the articles relevant to the fundamental human rights are being covered here to enunciate the protection available to the militants under the Constitution of Pakistan.

The article 4 in Part I of the constitution sets the tone for the Part II by guaranteeing the provision of fundamental rights for every citizen of Pakistan. It states:-

1. **Article 4.** *Right of individuals to be dealt with in accordance with law, etc.* To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. In particular :-

- a. no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- b. no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
- c. no person shall be compelled to do that which the law does not require him to do.

Relevant parts of the articles of the Chapter I to the Part II pertaining to the description of human rights in relation with the ongoing conflict in the Pakistan are quoted below.:-

2. **Article 8.** Laws inconsistent with or in derogation of fundamental rights to be void.
 - a. Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

- b. The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.
 - c. The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.
- 3. **Article 9.** No person shall be deprived of life or liberty save in accordance with law.
- 4. **Article 10.** Safeguards as to arrest and detention.
 - a. No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.
 - b. Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
- 5. **Article 10.** Right to fair trial:
 - a. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.
- 6. **Article 14.** Inviolability of dignity of man, etc.
 - a. The dignity of man and, subject to law, the privacy of home, shall be inviolable.
 - b. No person shall be subjected to torture for the purpose of extracting evidence.

7. **Article 25.** Equality of citizens.

- a. All citizens are equal before law and are entitled to equal protection of law.
- b. There shall be no discrimination on the basis of sex.
- c. Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

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- ¹ MAS Abdel Haleem, *The Qur'an – A New Translation*, Oxford World's Classics, 2004, Oxford University Press. (For the purpose of uniformity all subsequent English translations of the verses from the Holy Quran quoted in the parenthesis have been taken from the same translation. In the reference to the verses, the first number in parenthesis before colon refers to the Surah while the subsequent number after the colon refers to the verse of that surah translated within the quotes.)
- ² Sohail Hashmi, *Interpreting the Islamic Ethics of War and Peace*, in *Islamic Political Ethics*, 2002, Princeton University Press, page 194.
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